

## **Public comments for: Protection of Public Health Generally (Article 181, Section 181.21)**

#1 Edward Burns

### Comment:

I am opposed to repeal of section 181.21 of the NYC Health Code. I believe that informed consent must continue to be offered to parents of infants who will undergo ritual circumcision at which the mohel will use metzitzah b'peh. I believe that informed consent is in the best interest of the infant and can serve to protect him from the potential of orally transmitted herpes simplex infection from an infected mohel. Continued requirement of the consent does not preclude other modes of informing parents of the potential dangers of metzitzah b'peh such as educational pamphlets. These other modes can explain alternative methods of non-direct oral suction that have been deemed to be halachically acceptable by most orthodox rabbinic authorities as making a bris kosher. They do not, however, fully substitute for direct informed consent that explains the dangers of herpes simplex to the infant that could arise from metzitzah b'peh.. A fuller explanation for my opinion is elaborated in the attached op-ed piece, of which I am one of the authors, that was published this month in the Jewish Week.

Supporting Document:

 [nyc metztzah policy is insufficient.pdf](#)

Agency: [DOHMH](#)



Published on *The Jewish Week* (<http://thejewishweek.com>)

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## NYC Metzitzah Policy Is 'Insufficient'

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Tue, 06/23/2015

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Special To The Jewish Week

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As Jewish physicians we feel a special responsibility to speak out on health matters that uniquely affect the Jewish community. The policy recently adopted by the City of New York to respond to herpes simplex virus (HSV) infection risk as a result of a certain form of ritual circumcision is inadequate. For Jewish medical professionals to remain silent during this discussion would be, in our judgment, inappropriate.

HSV, which commonly causes "cold sores" and genital herpes, can result in death or permanent disability in newborns.

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There have been multiple cases of newborn males with laboratory-confirmed HSV infection following out-of-hospital Jewish ritual circumcision. There is strong evidence that in the majority of these cases the infection was associated with metzitzah b'peh, in which the mohel places his mouth directly on the newly circumcised penis and sucks blood away

from the wound (direct orogenital suction, abbreviated as DOS). This represents an ancient practice, but since the formulation of germ theory in the 1800s the overwhelming majority of traditional ritual Jewish circumcisions no longer employ this practice, instead using alternative methods of suction. Some members of the charedi community continue the practice of DOS.

Keeping a campaign promise, Mayor de Blasio has rescinded the requirement that parents give written consent prior to the performance of DOS on their newborns. Instead, when a baby contracts HSV following DOS, if the mohel is proven to have the same HSV strain as the infected baby by DNA testing, then the mohel will be banned for life from the practice. It can sometimes require multiple DNA tests to establish a match.

We think the policy is insufficient.

Circumcision is surgery and can transmit infection if not performed under antiseptic conditions. Oral contact with an incision by a person who is an HSV carrier, even if he is unaware of an open sore, risks transmission of HSV and other pathogens. Alternative means exist by which blood may be drawn from a circumcision wound such as a sterile glass tube or sterile gauze.

Several arguments have been voiced either in defense of DOS or to mitigate concern. The ones we, as physicians, are least qualified to respond to are theological. Genesis [17:10-11] instructs “every male child among you shall be circumcised. ...” The Babylonian Talmud states that “if a mohel does not perform suction, that is deemed dangerous and he is to be dismissed.” While defenders of DOS will invoke an interpretation of the Talmud passage to support it, the overwhelming majority of Orthodox rabbinic rulings — as well as those of the other religious streams — either deem DOS as being inconsistent with Jewish law and contemporary knowledge of hygiene or, at the least, acknowledge that removing blood by other means, such as with sterile gauze or a sterile glass tube, is preferable.

Additional arguments have been voiced in defense of DOS. The first is that, according to some New York infectious disease specialists, the link between HSV and DOS and newborn death or severe brain injury has “not been proven.” Those holding such view seem unpersuaded by the detailed analyses published by the U.S. Centers for Disease Control (CDC), which establish the link and the ratio of newborn infections of HSV type 1 v. type 2. Scientific evidence supporting the causal link between DOS and HSV was recently reviewed by six members of the Albert Einstein College of Medicine faculty in the *Journal of the Pediatrics Infectious Disease Society*. If individuals, however, are not persuaded by sound virology and epidemiology research, we would bet that no adult who understands the transmission of disease by microbes would consent to a human being’s putting their mouths upon a fresh surgical incision.

The second argument is the assertion that, if a mohel rinses his mouth with wine or an antiseptic mouthwash, the risk of HSV infection by DOS is eliminated. While prolonged exposure to alcohol in a laboratory Petri dish can indeed inactivate HSV, any claim that a dilute alcohol swish in the mouth, with its multiple nooks and crevices, will prevent HSV infection is fanciful.

The third argument is that the new NYC policy represents a reasonable compromise, protecting an individual’s right to practice his/her religion while employing the tools of

public health to limit the spread of disease. But allowing some babies to suffer the consequences of HSV infection before taking any action against the offending mohel, who must be proven to be the culprit by DNA testing, is not a preventive public health measure. It is too little, too late. DOS violates a baby's right to be protected from an obvious impending harm. The government has an overriding interest in protecting infants who cannot speak for themselves.

DOS ignores the teachings of modern medicine and the overwhelming consensus of modern rabbinic rulings. Behavior by mohelim and local politicians that ignores fundamental principles of hygiene, and abrogates their responsibility to protect innocent children, is shameful and simply wrong, despite their express desire to maintain ancient religious traditions.

The Jewish medical community should strongly affirm its respect for religious pluralism and sectarian particularism. It should dedicate itself to working with rabbinic leaders to make them aware of the unequivocal scientific and medical facts about the dangers of DOS and the urgency of using existing safe and acceptable alternatives. Moreover, we urge our political leaders to go on record supporting this approach.

*This statement is from Dr. Edward R. Burns, executive dean, Albert Einstein College of Medicine, Bronx; Dr. Robert Goldberg, executive dean, Touro College of Osteopathic Medicine, Manhattan; Dr. Laura Gutman, associate clinical professor emeritus, Duke University School of Medicine, Durham, N.C.; Dr. Robert Gutman, consulting professor, Duke University School of Medicine; Dr. Edward C. Halperin, chancellor and CEO New York Medical College, Valhalla, N.Y.; and Dr. Allen M. Spiegel, dean, Albert Einstein College of Medicine.*

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**Source URL (retrieved on 06/25/2015 - 11:28):** <http://thejewishweek.com/editorial-opinion/opinion/nyc-metitzah-policy-insufficient>



Members, Board of Health, City of New York

Steven & Alexandra Cohen  
Children's Medical  
Center of NY



Re: Article 182.21 of NYC Health Code

Dear Colleagues:

**Division of Infectious Diseases**

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Director

**Attending Physicians**

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Sujatha Rajan, MD  
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Pediatric Travel &  
Immunization Center

I am a pediatric infectious diseases specialist at Cohen Children's Medical Center of NY where I am Director of the Division of Infectious Diseases and a Professor of Pediatrics at Hofstra North Shore-LIJ School of Medicine. Over the last 35 years I have cared for a number of babies with neonatal herpes simplex infection, a serious infection in which the virus travels from the skin to internal organs and the brain. This infection is sometimes fatal. In some surviving babies there is brain damage with lifelong disability. Treatment of each of these babies requires hospitalization of the neonate for 2-3 weeks, one or more spinal taps, and maintaining a iv line for the entire hospitalization.

Among infants with herpes infection were some in which the initial skin lesions were located on the penis; each of these cases occurred after a ritual circumcision that involved oral-genital contact with direct oral suction of the raw penis as part of the ritual. I have cared for neonates infected in this way and have published a paper describing 2 such infected infants. In my professional opinion it is abundantly clear that the direct oral suction contact is the origin of the infection in these babies.

In pediatrics, we place a high priority on prevention of illness as the best way to optimize the health of children. Routine vaccinations, the use of car seats, and the placing babies on their back to sleep are all examples of preventive measures to help prevent illness and injury in children. These cases of neonatal herpes are entirely preventable by modification of the ritual circumcision procedure to avoid direct oral genital contact. I strongly recommend that the Board of Health takes all measures to avoid future preventable cases of this potentially devastating infection that affects newborns, the most vulnerable members of our community.

Thank you for your dedication to the health of our community.

Sincerely,

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**From:** [Sood, Sunil](#)  
**To:** [Resolution Comments](#)  
**Cc:** [Julia Schillinger](#)  
**Subject:** Proposed amendment to 181  
**Date:** Tuesday, July 28, 2015 11:55:23 AM

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I have seen the "Notice of Public Hearing and Opportunity to Comment on Proposed Amendments to the New York City Health Code" pertaining to Article 181 of the New York City Health Code (to repeal §181.21). As a pediatrician who specializes in Infectious Diseases and does research on how to improve the outcome of babies who get herpes, and as someone who is responsible for the well-being of babies born in my hospital, I am vehemently opposed to this action. As I understand it, the repeal of the consent process is to be replaced by an "educational initiative" to "educate more parents about DOS by distributing materials in certain hospitals and pediatric and OB/GYN practices." This will be ineffective in the absence of a procedure to ban the practice. This reality is reflected in the statement that the "Department hopes that it can..." educate more parents. I have personally treated some of the babies who were harmed by acquiring herpes of the brain after undergoing direct oral suction (DOS). It is unconscionable that in an enlightened era of Public Health, we still allow babies born in New York to suffer brain injury from or die of a preventable infection. Instead, the City of New York should ban the practice and the Department of Health and Mental Hygiene should be given more enforcement tools.

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